CHAPTER 24

HERITAGE PROPERTY

24.1 Background

National heritage property is given "conditional exemption" from inheritance tax. This means that, subject to certain conditions being satisfied, **IHT will not be charged on a transfer of national heritage property**.

The idea behind the heritage property exemption is to permit the owners of such property to keep the assets in the UK (and thereby continue to allow such assets to be part of the UK's national heritage) rather than the owners having to sell the property (and risk the assets leaving the UK permanently) in order to pay the IHT.

In return, the owner must agree to **make the property available for public viewing**, be this at a public amenity (such as a gallery or museum), or at the owner's place of residence.

24.2 Heritage property

National heritage property is defined within s.31 IHTA 1984 and includes: IHTA 1984, s.31(1)

1) Pictures, books, manuscripts, works of art or scientific objects which are pre-eminent for their national, scientific, historical and artistic interest;

2) Land of outstanding scenic, historical or scientific interest;

3) Buildings which should be preserved for their historical or architectural interest together with objects historically associated with the building.

HMRC (Inheritance Tax) decides whether property qualifies.

24.3 Conditions for "conditional exemption"

IHTA 1984 , s.30

Tax on death

a) The property must be heritage property at the date of death; and
b) A claim for exemption must be made within 2 years of death

In this case, **no tax is charged on the value of the heritage property within the death estate**.

Lifetime transfers (PETs)

a) The property must be heritage property at the date the PET becomes chargeable (i.e. at the date of death);
b) The person responsible for paying the tax (i.e. the donee) must claim exemption within 2 years of death;
c) The heritage property must either have been owned by the donor for 6 years before the gift, or have been acquired by the donor on the death of a person where conditional exemption was claimed.

In this case, **no tax is charged on the PET which becomes chargeable** on the death of the donor within 7 years of the gift.

In respect of PETs, no exemption is available where the donee has sold the property before the donor's death.

24.4 Undertakings to be given to HMRC

Having claimed conditional exemption, **certain undertakings (promises) must be given by the new owner of the heritage property to HMRC** if exemption from IHT is to continue.

The main undertakings are: IHTA 1984, s.31(2) IHTA 1984, s.31(4)

1) to allow **reasonable public access** to the property;

2) to **maintain and preserve** the property (including being responsible for its insurance);

3) to **keep the property in the UK**. The property can only leave the UK with Revenue consent (for example for exhibition abroad); and

4) to **publicise the undertaking** to enable the general public to be aware that the property is available for viewing or inspection. This is normally done via HMRC's website.

If the owner **fails to observe these undertakings** (for example by denying the general public reasonable access to the property), **HMRC has power to remove the IHT exemption**. This will mean that the assets are no longer heritage property and IHT will therefore become due.

24.5 Recapture charges

IHTA 1984, s.32

A charge to IHT (a "recapture charge") will arise on any of the following events:

1) A failure by the owner to observe an undertaking; or

2) The death of the owner without new undertakings being given by the person to whom the property is transferred; or

3) A gift of the property without new undertakings being given by the person to whom the property is transferred; or

4) A sale of the property (except a sale to a museum or similar body);

The amount chargeable to IHT is either:

a) The **value of the property** at the date of the chargeable event (in the event of a gift or failure to observe undertakings); or

b) The **net proceeds of sale** (in the event of a sale).

Any CGT payable on the chargeable event can be deducted from the amount chargeable to IHT.

The person liable for paying the IHT on a recapture charge depends on the nature of the chargeable event. This can be summarised as follows:

Event	*Person liable*
Failure to observe undertakings	The owner of the property
Death of owner without new undertakings being given	New owner
Gift of the property without new undertakings being given	Donee
Sale of the property	Vendor

The chargeable amount is added to the cumulative total of the last person who made a conditionally exempt transfer (if he is still alive) or to the death estate of that person (if he has died).

Tax is charged at 20% (if the person who made the conditionally exempt transfer did so during his life) or at 40% (if the transfer was on death). IHTA 1984, s.33

Illustration 1

Richard died in September 2009 leaving as estate as follows:

	£
Family home	500,000
Cash & quoted shares	250,000
Original L S Lowry drawing	150,000
	900,000

He had made no lifetime transfers. Richard had bought the Lowry drawing in August 2001. His will left the family home to his wife, the Lowry drawing to his son Sean and the residue of the estate to his daughter Marie.

The Lowry drawing was designated as national heritage property and Sean gave the necessary undertakings to HMRC. The drawing hangs in Sean's dining room and its whereabouts (and Sean's contact details) are published on the HMRC website.

In March 2011, Sean got fed up of people visiting his house to view the drawing and duly sold it to a private art galley for £200,000. Sean has a CGT liability of £11,172 to pay on the transfer.

Show the IHT implications of the above events.

As the print is designated as heritage property, it will not be charged to tax in Richard's death estate. The IHT on Richard's death is therefore as follows:

	£
Family home	500,000
Cash and quoted shares	250,000
Lowry drawing	Exempt
	750,000
Less: exempt transfer to spouse	(500,000)
Chargeable estate	250,000
Less: nil band 2009/10	(325,000)
Taxable	NIL

No IHT payable.

"Conditional exemption" is granted on the Lowry drawing.

However, if Sean either sells the drawing or fails to allow public access to the asset, a recapture charge arises and IHT becomes payable.

The sale of the print by Sean in March 2011 will therefore give rise to a recapture charge.

This is calculated as follows:

	£
Richard's chargeable estate	250,000
Add: chargeable amount £(200,000 – 11,172)	188,828
	438,828
Less: nil band 2010/11	(325,000)
Taxable	113,828
IHT @ 40%	£45,531

Notes:

i) Richard made the conditional exempt transfer, so we add the chargeable amount to his death estate.

ii) He made the transfer on death, so the recapture charge is at 40%.

iii) The chargeable amount is the net proceeds of sale, after CGT.

iv) We use the nil band at the date of the chargeable event to calculate the tax.

v) The tax is payable by Sean and the due date is as for other chargeable lifetime transfers.

24.6 Capital gains tax

Where **heritage property is disposed of by way of a lifetime gift** (either outright or into a trust) the **transaction takes place at no gain no loss**. TCGA 1992, s.258

Illustration 2

Matthew bought a Grade 2 listed building in the Sussex countryside for £500,000 in April 1999. In January 2006, Matthew gave the building to his daughter Charlotte when it was worth £800,000.

Matthew died in May 2008 leaving an estate of £1.5m. Apart from the gift to Charlotte, he made no other lifetime transfers.

Charlotte sold the building for £950,000 in December 2010.

Comment on the tax impactions of the above.

Gift of building to Charlotte in 2006

1. PET for IHT. Chargeable on Charlotte if Matthew dies within 7 years.

2. Assuming the building "should be preserved for its historical or architectural interest", it will be designated as heritage property.

3. As there is no IHT payable on the gift in 2006, Charlotte does not need to give undertakings to HMRC re public access etc, so no conditional exemption claim is made.

4. The gift takes place at no gain no loss for CGT, so no CGT charge arises on Matthew.

Charlotte's base cost in 2006 is:

	£
Original cost (April 1999)	500,000

Matthew's death May 2008

1. The PET to Charlotte becomes chargeable, so Charlotte will have an IHT liability.

2. If Charlotte makes a conditional exemption claim and gives the necessary undertakings to HMRC, no tax will be charged on the PET.

3. A full nil band is therefore available in Matthew's death estate.

Charlotte sells building in December 2010

She will have a CGT liability as follows:

	£
Proceeds	950,000
Less: base cost	(500,000)
Gain	450,000
Less: AE	(10,100)
Taxable	439,900
CGT @ 28%	£123,172

There will also be an IHT recapture charge.

Matthew made the conditional exempt transfer and has since died, so we add the chargeable amount to his death estate. As his death estate was £1.5m, there is no nil band remaining.

He made the transfer when he was alive, so the recapture charge is at 20%.

The chargeable amount is the net proceeds of sale, after CGT. The IHT recapture charge on Charlotte is therefore:

	£
Proceeds	950,000
Less: CGT	(123,172)
Chargeable amount	826,828
IHT @ 20%	£165,365

Example 1

George died in February 2003 leaving his entire estate to his son David. The estate was as follows:

	£
House and personal chattels	240,000
Bank deposits	14,000
Antique Spode vase	65,000
	£319,000

His only lifetime transfer had been a cash gift of £40,000 to his friend Harry in 2002.

George had bought the vase at a car boot sale in 1996, and it true worth was only discovered when valuing the estate for probate purposes. HMRC has confirmed that the vase has significant historical interest and David made a corresponding claim for conditional exemption.

David ran into financial difficulties and sold the vase for £85,000 in January 2011. CGT payable on the sale is £2,772.

Calculate the recapture charge on the sale of the vase.

Answer 1

As the vase is designated as heritage property, it would not have been charged to tax in George's death estate. George's chargeable estate in 2003 was therefore as below:

	£	£
House and personal chattels		240,000
Bank deposits		14,000
Chargeable estate		254,000
Nil band 2002/03	250,000	
Less: lifetime transfers £(40,000 - 6,000)	(34,000)	
		(216,000)
Taxable estate		38,000

The sale of the vase by David in January 2011 will give rise to a recapture charge, calculated as follows:

	£	£
George's chargeable estate		254,000
Add: chargeable amount £(85,000 – 2,772)		82,228
		336,228
Nil band 2010/11	325,000	
Less: lifetime transfers £(40,000 - 6,000)	(34,000)	
		(291,000)
Taxable		45,228
IHT @ 40%		£18,091